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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Rocky Bixby, et al,

Plaintiff,

vs.

KBR Inc., et al,

Defendant.

Case No. 3:09-CV-632-PK

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION FOR  
PROTECTIVE ORDER**

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**OVERVIEW**

The KBR defendants seek a protective order on the timeline document that is the subject of Plaintiffs' Motion to Enforce Interim Protective Order. The KBR defendants have not shown

that they are entitled to the protection they seek. As well, even if the protection was once available, the KBR defendants waived it when they waived their work product protection.

### **FACTS**

The Declaration of Amanda Halter in Support of Reply to Response to Plaintiffs' Motion to Enforce Interim Protective Order (filed under seal) sets forth plaintiffs' understanding of the history of documents produced in this litigation. The documents underlying the timeline are not subject to the confidentiality order.

### **DISCUSSION**

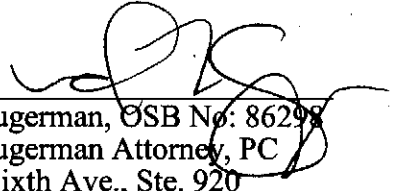
The KBR defendants freely discuss in public and in Congress their version of the facts of this matter but would have this Court prohibit similar discussions by the veterans. The KBR defendants rely on *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 27 (1984) for the proposition that the First Amendment provides less protection to documents obtained in civil discovery. That is all well and good, except that the KBR defendants ignore their threshold showing required to meet the burden of confidentiality. LR 26-4. They also fail to explain their waiver problem.

Apart from that, the KBR defendants overlook the Oregon Constitution with its much stronger protection of free speech rights (Or. Const., Art I, Sec. 8) and the anti-secrecy provision. (Or. Const., Art. I, Sec. 10). The Court need not reach state or federal constitutional questions, however, because the KBR defendants did not designate the underlying documents as confidential and did not otherwise limit or redact the designation to actually confidential materials. They have failed to meet their burden.

### CONCLUSION

The Court should deny the motion.

DATED this 25<sup>th</sup> day of March, 2011.



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